

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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R.M. DEVELOPMENT & CONSTRUCTION,
LLC,

Plaintiff,

-against-

REPORT AND
RECOMMENDATION
09-CV-1666 (JG)

PRINCIPLE IX ASSOCIATES, LLC, et al.,

Defendants.

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Gold, S., Magistrate Judge:

Plaintiff R.M. Development & Construction, LLC (“R.M.”) originally filed this action in New York State Supreme Court against defendants Principle IX Associates, LLC (“Principle IX”), Lumus Construction, Inc. (“Lumus”), Integrated Construction Enterprises, Inc. (“ICE”), and Arch Insurance Co. (“Arch”), seeking to recover payment for construction services it provided in connection with the relocation, stabilization, and restoration of the Hamilton Grange National Memorial (“the project”). Defendants filed a notice of removal on April 23, 2009.

Plaintiff is a corporation. Counsel for plaintiff moved to be relieved on August 11, 2011. Docket Entry 38. By Order dated August 27, 2011, I granted counsel’s motion. Docket Entry 42. In my Order, I advised plaintiff that a corporation may appear in court only through retained counsel, allowed plaintiff until January 14, 2011 to retain new counsel, and alerted plaintiff that failure to appear through counsel by that date could result in a motion seeking dismissal of its claims. Docket Entry 42 at 4.

Plaintiff has not appeared through new counsel. I held a telephone conference today with counsel for defendants Principle IX and Lumus. During that conference, I advised counsel that I saw no need for defendants to make a motion, and that this Court would instead on its own

initiative issue a report recommending dismissal.

For these reasons, I respectfully recommend that this action be dismissed with prejudice for failure to prosecute unless plaintiff appears through new counsel during the time for filing objections. Any objections to the recommendation contained in this report must be filed with the Clerk of the Court within fourteen days of this Report and in any event no later than February 22, 2011. Failure to object to this report may waive the right to appeal the district court's order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *See Small v. Sec'y of Health & Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

A copy of this report will be mailed to plaintiff's principal at his last known address.

/s/

Steven M. Gold
United States Magistrate Judge

Brooklyn, New York
February 3, 2011

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